



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,457	07/10/2001	Kuriacose Joseph	2050.001US6	9752
44367	7590	01/07/2011		
SCHWEGMAN, LUNDBERG & WOESSNER/OPEN TV P.O. BOX 2938 MINNEAPOLIS, MN 55402-0938			EXAMINER GARG, YOGESH C	
			ART UNIT 3625	PAPER NUMBER
			NOTIFICATION DATE 01/07/2011	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@slwip.com
request@slwip.com

1. This letter is in response to the applicant's filing of an IDS on 3/12/2010 and a Substitute Reissue Declaration on 6/7/2010.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 3/12/2010 was filed after the mailing date of the Non-final office action on 3/12/2010. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Under " Non-Patent Literature Documents" the examiner could not consider the following two cited references:

- a. "Japanese Application Serial No.2009-101935, Office action mailed 11/17/2009", 7 pgs. The reason it is not considered is that the provided English translation does not indicate the publication date of the cited Japanese Patent application No.H4-127688 which is used to reject the claims. In absence of the publication date of this Japanese document it cannot be determined if it can be used to reject the subject matter claimed in the instant Reissue application.
- b. "Television Images Information and Television Engineering Handbook", first edition Ohmsa Ltd, ISBN 4-273-03301-5, (Nov 30, 1990),659-666. The reason it is not considered is that no English translation has been and therefore it cannot be determined if it can be used to reject the subject matter claimed in the instant Reissue application.

Substitute Oath/Declaration

3. Substitute declaration filed on 6/7/2010 is entered but found defective.

The nature of the defect(s) in the Substitute declaration is set forth in the discussion below in this Office action.

The Substitute reissue declaration filed 6/7/2010 with this application is defective because the error which is relied upon to support the reissue application is not an error upon which a reissue can be based. See 37 CFR 1.175(a) (1) and MPEP § 1414.

The filed Substitute declaration does not identify the existence of an error in the specification, drawings, or claims, which error causes the original patent to be defective. *In re Wilder*, 736 F.2d 1516, 222 USPQ 369 (Fed. Cir. 1984). All that is needed for the oath/declaration statement as to error is the identification of "at least one error" relied upon. In identifying the error, it is sufficient that the reissue oath/declaration identify a single word, phrase, or expression in the specification or in an original claim, and how it renders the original patent wholly or partly inoperative or invalid. The filed declaration does not do this. Instead it merely states that the originally patented claims did not cover an invention/ embodiment which is distinct from what was originally patented.

This statement of error is not sufficient because it does not identify a single word, phrase, or expression in the specification or in an original claim (s) 1-9, and how it renders the original patent wholly or partly inoperative or invalid. The statement filed is no better than saying in the reissue declaration that this "application is being filed

to correct errors in the patent which may be noted from the change made by adding new claims", see MPEP 1414, II, C. Hypothetically if both the originally patented claims and the new claims were filed together they would have represented two distinct inventions/embodiments subject to restriction. Therefore by cancelling all the originally patented claims and instead filing new claims belonging to another distinct embodiment/invention amounts to utilizing the reissue opportunity to file claims to a new/distinct invention not claimed earlier but the new claims do not indicate or prove that the earlier patented claims were inoperable by reason of claiming less than the applicant had the right to claim.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C. Garg whose telephone number is 571-272-6756. The examiner can normally be reached on Increased Flex/Hoteling.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Yogesh C Garg
Primary Examiner
Art Unit 3625

/Yogesh C Garg/
Primary Examiner, Art Unit 3625